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ABSTRACT

Law-related education programs for elementary school should be based on children's perceptions of reality. Psychologist Jean Piaget's studies of cognitive development indicate that children constantly reconstruct reality as they undergo new experiences. Children at early developmental stages may not be capable of understanding the origin and function of the law. Another problem for law-related education is that legal understandings require a conceptual framework which is more easily constructed individually than in a classroom setting. Also, justice cannot be taught in the unjust setting of most schools. Some schools have encouraged experiential learning of legal concepts by involving students in decision making. For example, the Cottage Lane School in Rockland County, New York, which has based a law-related curriculum on the idea of a just community, has taught students to use problem-solving techniques on matters such as school bus boarding, playground rules, and behavior in the classroom. The conclusion is that a law-related education program will be effective if it encourages experiential understanding about rights, community, authority, power, and the strengths and limits of the law. (DB)

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THE IMPLICATIONS OF COGNITIVE DEVELOPMENTAL THEORY FOR LAW RELATED CURRICULUM IN THE ELEMENTARY SCHOOL

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The Implications of Cognitive-Developmental Theory for Law-Related Curriculum in the Elementary School

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(Presented at American Bar Association Institure for Law and The Humanities - August 18th, 1978.)

This talk will be presented in three parts. The first part will present a cognitive-developmental framework. The second part will consider curriculum problems indigenous to law-related curriculum in the elementary grades. The third part will describe a law-related curriculum which is responsive to the major developmental tasks of elementary school children.

Piaget's research has shown that children go through different stages of development. Stages are moments in the child's perception of reality which are characterized by unique ways of receiving and understanding experiences. From this developmental perspective, children are always reconstructing their worlds, consequently the world of childhood looks different from the world of adulthood. Children experience reality differently at different ages and the same reality may appear differently to two children of the same age at the same stage of development. One factor which accounts for these differences in perception is the raw material, the individual experience, from which the child constructs his world.

An example of how a seemingly simple and prosaic event from an adult viewpoint appears to a child is the story of a 6-year old child who was asked by her mother to deliver her older brother's forgotten lunch to

his classroom. When the child appeared at school she discovered that the teacher was seated on a stool at the other end of the room and she had to walk down a long aisle to get to him. The task completed she returned home and informed her mother that she had done as she was asked but that she found the experience frightening. "Why?" asked the mother. "Because," the little girl explained, "there was a king sitting in the front of the room and I was scared. I didn't know what to say to a king so I just gave him the lunch and left."

Consider the plight of a little girl who was too terrified to speak when she assumed that her parent's car was about to cross the George Washington Bridge by climbing up the suspension cables and rolling down the other side. Imagine her relief when she was able to reconstruct her world view and conclude that cars traverse bridges on roadways rather than cables.

Developmental theory assumes that no events are neutral that human intelligence is constantly constructing meanings and as a result, transforming reality. This process of active intelligence takes place at all points in development and cuts across all stages. The construction of reality is human intelligence at work. Because it is an individual, experiential phenomenon, it is not a teachable process, rather it is one which goes on before, after, during, and in spite of schooling.

A visitor to a nursery school for 3-year olds participated in a group construction of reality. The visitor was informed by one of the children that Jane (a former teacher) has left to have a baby. She was told that Jane was busy purchasing diapers, bottles, cribs and other equipment for the baby. One little girl, who was rather pensive during

the Jane narration suddenly turned to the visitor and announced, "Everybody bees a baby except cheese." Instantly the other children, who understood the meaning of this remark much better than the adult, began looking around the room and classifying objects. They asked the visitor if she had been a baby, they decided that the guinea pig had been a baby but that the table had not. This process went on for quite some time with intense group interest as the children categorized the objects in their school world according to their organic or inorganic origins.

Another example of the intensity and relentlessness with which children construct their worlds comes from the following narrative written by Lisa Dewlit, the teacher of a group of 6-7 year olds at the Child Development Center in Durham, North Carolina.

> "Why do you think people speak different languages?" she asked them after one child in the group informed everyone that she was going to Greece for a vacation and that in Greece people didn't speak English.
>
> "Well," said Eddie thoughtfully, "It depends on what language is in your vocal chords." The teacher responded, "My, what an interesting idea! Could you explain it a little more?" "You see," said Brandy, glibly picking the story right up, "everybody has three languages inside his body, but the vocal chords are attached to only one of them and that's the language you speak." Ramon, the resident scientist of the group continued, "Actually, you speak a language because your mother speaks that language. You see, when the baby is in the mother's stomach there's an English tube from the mother's vocal chords to the baby, and when the mother talks, some of the English goes out of her mouth and some of it goes

down the tube to the baby, and that is how the baby learns how to talk English." "Unh, uh," says Myriam, "that can't be because I have a friend who's Filipino and her mother speaks Filipino, but she only speaks English." Well, I thought this would get them, but -- wrong again. After only a few seconds Ramon patiently explained, "You see, the language tubes that are connected to the baby from the mother are different shapes. Now the English tub is round and it works really good, but the Filipino tube is sort of funny-shaped like a triangle and it doesn't work so good."

The preceding constructions, although charming to adults, are not logical. However, from a psychological point of view they are perfectly consistent. Ramon adjusts the world to his theory about tubes and languages when faced with a contradiction rather than changing his theory. At a later developmental stage he will be forced to adjust his theory as a result of his broader experiences, but for the moment his construction is adequate and perfectly sensible.

If one accepts the premise that children are continuously constructing the world it would follow that they are also making constructions about the law. However, legal constructions are problematic. While children are the recipients of the restrictive aspects of the law in the form of rules, limits and prohibitions delivered by adults, they have no direct experience of how the rules came into being or even what purpose they serve. There is also tremendous variation in the individual child's experience with the law, that is, social reality is subject to tremendous variation. Authority

may be benign, benevolent, punitive, supportive, just, unjust or even irrational; where water is always wet, rocks are always hard, and the sun is always warm.

In the area of law-related curriculum content and process are identical for young children. The origin and function of the law are major prerequisite understandings for all law-related curriculum. Young children know what laws are in the restrictive sense (Tapp and Kohlberg, 1971). However, their understanding of the prescriptive aspects of the law is limited by development. In order to comprehend the origin and function of the law, fundamental ideas, which are abstractions for young children, must be understood -- concepts of community, the common good, the meaning of rights, and representation. A useful analogue for understanding why the creation of the law is abstract for young children is the problem of a frozen French fried potato. For urban children whose parents purchase frozen French fries in the supermarket, the connection between this food which comes in boxes with tubers growing in the ground is an abstraction, unless they have been to a farm or seen their parents peel potatoes. Similarly, children receive the products of the law in the form of rules, but they may not understand their origins.

A very popular joke among 9-year olds, which is a direct play on the abstract quality of ideas is, "If you took away the Statue of Liberty, there would be no liberty." The writings of 7-10 year old British children describing the American Revolution are further examples of the abstract quality of ideas to children:

> The government stopped Boston being a port. They blocked it so if people were naughty they had to go to England and go in court to get some words out of them.

> On the Mayflower in some log cabins were some big chests full of tea. While we wasn't looking these Americans came aboard our ship and they threw this tea overboard. The Americans had Indian things on so they would not know it was them who did it. They threw the tea overboard so they wouldn't have to pay the rent. I think they should not of put the tea in the sea. They just wasted it. They could of kept the tea.

There are aspects of curriculum which are directly teachable: facts such as the multiplication tables, skills such as long division. However, you cannot teach a concept directly because the learner must build relationships between ideas for himself. Any experienced elementary math teacher will tell you that it is impossible to "tell" children about the relationship between addition and multiplication. Each child must make this construction for himself.

To recapitulate the argument, if one accepts the cognitive-developmental premise of the construction of world views, it follows that the understanding of the origin and function of the law must also be constructed by each child for himself. Developmental psychologists, i.e., Piaget and Kohlberg also tell us that there are points in development where the very understandings which are fundamental to law-related curriculum are unavailable to young children of primary elementary school ages (6-7's). Piaget's term "immanent justice" describes such a developmental moment at which young children see all rules as just and all events as orderly and ordered. To such a child law and justice are not man-made elements in the universe at all, they are "given." The collapse of a bridge and the resulting injury of a peson would be seen as an act of cosmic justice. At the same developmental moment such children obey the law out of fear of punishment. These developmental limits prevent children from understanding the origin and function of law. For these children the abstract principles which underly the law are inconceivable.

In Dorothy Cohen's book, The Learning Child, 1972, there is a charming story about a family in which the father habitually emptied his pocket change on the dresser. One day a neighbor noticed that the 6-year old daughter in this family was bestowing the neighborhood children with abundant supplies of candy. The father, realizing that his change was being diminished in direct proportion to the amount of candy which the local children were receiving, confronted his daugher with the sorry news that he was aware of the source of her benevolence. The daughter at first denied taking the money but finally admitted her guilt. Her parents had a long discussion with the child in which they explained why everyone living in a family needed to trust one another. The little girl acknowledged that she understood this idea and restrained herself for awhile, but several weeks later there was a repeated performance. This time the little girl readily admitted her transgression and accused her parents saying, "If you know I'm a stoler, why do you leave money around where I can find it?"

There are two fundamental problems for law-related education. First there are developmental stages in which the child is incapable of understanding the origin and function of the law. Second, these understandings require a conceptual framework which cannot be taught but must be constructed by each individual for himself.

In addition, there is the problem pointed out by Freeman Butts and Isidore Starr at the May Symposium of the A.B.A.; i.e., you cannot teach justice in an unjust setting and most schools, for a variety of complex reasons, are hardly models of just environments. Children are constructing their concepts of the law constantly whether or not they are being taught this content directly. The law is not a neutral area like chemistry, which,

if not presented, is not learned. Since law-related education is happening continuously in all schools through the child's construction of the legal realities derived from the "hidden curriculum", a logical approach to this curriculum area is to take the implicit legal curriculum which is embodied in the life of the school community and make it explicit. This approach is John Dewey's recommendation for teaching children about democracy.

An obvious advantage of using the school community as the content for an experientially based law-related curriculum is its availability to every child. If the hidden curriculum is not used in explicit ways and contradictory content is presented, children get confused signals and may proceed with their legal constructions on the basis of this contradictory information. An experientially based curriculum provides a consistent and common reference point for all the children involved.

For the remainder of this talk I will be drawing examples from the minutes of the student councils in operation at the Cottage Lane School in Rockland County, New York, where the principal, Mr. Joan Shaheen has been utilizing the idea of a "just community" as the basis for a law-related curriculum. The model in operation is not being presented as a panacea, the principal and staff readily admit to problems which they are in the process of working out. However, the positive school climate which is apparent to any visitor, the high staff morale and the richness of law-related understandings available to the students make it well worth examination and further study.

The main features of the Cottage Lane model are two student advisory councils, Little SAC for K-2nd graders and Big SAC for 3-6th graders. The students meet weekly with the principal to consider through

parliamentary procedural issues affecting school life. The principal acts as secretary and advisor to both Big and Little SAC. The students have a wide scope for decision making and are entrusted with more power as problems are resolved to the satisfaction of the school community.

One problem, inherent in all representational models was pointed out by Fischer and Fischer at the May A.B.A. Symposium. Because young children are concrete, only those who participate in the student councils are being given the raw material to construct an accurate legal reality. However, at Cottage Lane this problem is acknowledged and dealt with by both children and staff and has become part of the curriculum. Dr. Shaheen has organized the Cottage Lane School to extend SAC discussions and decision making into the classrooms. Minutes are circulated, read and discussed by classroom teachers, peer group classroom discussions about SAC functioning are part of the curriculum, the principal meets with groups of children who wish to respond to the functioning and decisions of SAC, and there is an intensive staff development component which encourages teachers to engage in problem solving with their children. The entire school is integrated around the self-governance model.

An example of this process from Little SAC minutes follows:

"Most of the whole class is upset because they are not in Little SAC (the Little SAC representative is speaking) and if only one person could come and watch and not ask any questions they might feel better." Alex said that the children want to see what it is like. The children were very concerned that visitors might want to talk. They finally decided to vote unanimously that each of the first and second graders can bring a visitor each week and the visitor is to watch and see what it is like, but the visitor is not to talk.

The above is an example of children dealing with Fischer's objection to the abstract quality of representation. The children are aware of the

problem and have found a constructive solution.

We will now consider the Cottage Lane model from the point-of-view of its congruence with the developmental tasks of children in elementary school.

The middle years of childhood (6-12) have been described by developmental psychologists as a time when there is a shift away from the fantasy thinking of early childhood and towards a sense of reality. Middle years children are concerned with what they are like, what the world is like, and with how everything works. The push toward adult reality intensifies with age.

There are a number of developmental dialectics that require resolution during this period; the problem of self versus group, the rigidity and absolutism of the thought of younger children versus the greater flexibility of the thought of older children, feelings of helplessness versus power and competence, concrete thinking versus abstract thinking, dependence versus independence. All of these developmental problems are inherent in any elementary school community. The Cottage Lane model helps with their resolution in a number of ways.

During the middle years of childhood the center of gravity moves for children, away from adults and towards peers; so that the society of children dominates in many dynamic ways. This childhood society has its own power hierarchy in which older children dominate younger children, control rites of initiation, and hold the knowledge of acceptable mores within their "superior" life experience. At the same time that children move into this peer society there is a staking down of children's power in opposition to adults. Since in reality children have limited control of their worlds and are fundamentally dependent upon adults there is a

tendency to compensate for this inconvenience within the peer group. Older children tend to tyrannize younger children and then must deal with the resulting guilt while younger children tend to be fearful of older children at the same time that they need their acceptance.

The very presence of SAC provides a channel for this developmental phenomenon. Here is a letter from a young child to the student council:

> Dear Student Council: For the past 8 months people have been popping; and knocking down my bike. I would like some people to help me to stop it. Every time I tell Dr. Shaheen. I get beat up after school.

An example of older children dealing with the vulnerability of younger children in a constructive manner is one of the many bus rules generated by Big SAC and considered binding for the entire school community. "The front seats are always saved for Kindergartners. Kindergartners get on the bus first. They might be trampled if they don't sit fast."

The opportunity for children to generate rules becomes a vehicle through which the curriculum helps children gain control of their world at the same time that they learn about legal procedures. In these instances the workings of the student councils becomes part of the process of solving developmental tasks.

Some of the salient cognitive shifts in thinking during this period include movement from ego-centric to socio-centric perspectives, from rigid to flexible thought, and from concrete to abstract reference points. Here is a letter from Little SAC to an older child in which the rigidity of thinking and the inability to deal with intentionality are clear:

> Dear Susan: We think it is hard for you not to be a bus monitor when we know you like to help. But we don't think you should tell children what to do on the bus. One day you tried to stop two children from fighting and that was very nice of you. But they wouldn't listen to you because you are really not the bus monitor. We like you. We like your pencil store and we do not think you should be playing bus monitor.

While this group of young children is fixated on the powers which are related to the role of monitor and are therefore unable to understand other issues, the same student group at the same developmental level, after being taught problem solving techniques by their teachers, thought through the difficulty of the destruction of school playground swings in the following manner:

> The younger children were very upset because older children, probably from the high school, were vandalizing their swings; cutting the leather seats and tossing the ropes over the stanchions so that the swings were too high for the small children to reach. The children concerned with this problem met as a group and called themselves "The Problem Solvers". They considered a variety of possibilities along with the short-comings of their own solutions. Some of the ideas they generated included: hiring two guards to watch the 2 swing sets, or hiring one tall guard who could keep his eye on both sets of swings at once. They decided that the swing breakers would come out when the guards were not there or when it was raining, and they also decided they didn't have the money to hire a guard. Then they thought they could ask the police to help but decided against that idea on the grounds that the police were too busy. Perhaps they could get the police to lend them a helicopter, and their parents would paint it the color of the sky so the swing breakers couldn't see it hovering. That they decided might be too expensive. Perhaps the swings should be made of a stronger material like wood or fiber glass. Finally they decided to write a letter to the superintendent of schools to see if he could help. They also decided to write to the high school student council about the problem since the swing breakers were probably high school students.

During the process of considering the problem the vandalism stopped. The children then wrote the following letter to the high school student council:

> Please don't send us any ideas about solving the 'swing breakers' problems because people aren't breaking our swings anymore. Thank you, Little SAC.

While the problem solved itself in this particular instance, the children involved participated in many learnings: they were engaged in group problem solving, considered the strengths and limits of their own solutions, became aware of other student groups and how to communicate with them, and learned that some things have a way of solving themselves.

Another developmental problem is the sense of competence and mastery versus helplessness. Although children can become competent at generating laws, they are not always capable of obeying them because they are still egocentric. Both Big and Little SAC members understood the need for controlling running in the halls and so they created a school rule against running. Big SAC members made a list of reasons why running in the halls was fun and, to some extent, functional. However, despite their awareness of the need for this anti-running law, the legislators had a problem obeying it. At this point the principal had to intervene and assure the law makers that she would protect them from their own instincts. A memo was sent to every classroom indicating that running was forbidden and that the principal would help the children obey their own rules.

These children had a level of logical understanding of the law which was further developed than their ability to deal with it. In their struggle to achieve autonomy, children are still in need

of adults who are both supportive of their striving towards independence and yet are able to set firm limits.

The Cottage Lane model uses direct experience to resolve many conceptual problems. One problem children have difficulty understanding is the hierarchy and role of authority. It is especially confusing for young children to learn that there are lines of power beyond their immediate awareness. It was interesting and threatening to members of Little SAC to learn that Dr. Shaheen, their principal, also had a boss. They wanted to know what the superintendent of schools looked like and what he did. They wrote a letter to the superintendent and invited him to visit Little SAC. He came and they asked him what he did, got a feeling for him as a person and constructed some ideas about his job. This experience is in marked contrast to the supposition of a group of 9 year olds, who without a concrete experience, concluded that what the Mayor of White Plains did was collect and pocket coins from parking meters.

In Big SAC Dr. Shaheen directed the attention of the council to specific legal issues which were part of school life. Since many children were concerned about the disappearance of pencils she requested Big SAC to consider the problem. The following are minutes from a Big SAC meeting around this issue:

> We decided that if a pencil was missing we wouldn't try to figure out who did it, but if it was a calculator that was missing we would go after the thief. Dr. Shaheen said that she did not believe we were ready to discuss this issue...that, indeed, it was a large one.

The children grappled with problems of search and seizure for several months. I attended one of their meetings with a colleague and the children asked us our opinion of how to handle the problem. In the fall they will continue discussing this issue. These children are

learning that there are many questions which are so complex that even adults don't have ready made and easy answers...that good laws require much thought and are often compromises at best.

Another problem Big SAC considered was the right of the public to information versus the protection of individual rights. They struggled with the question of whether minutes of Big SAC should be distributed since they contained the name of a delegate who was frequently breaking the school rules.

Some children did not think the name of the delegate should be included because he would feel bad when everyone found out about his behavior. Others felt that it was important that the minutes be accurate and record exactly what transpired at the SAC meetings. There were many hours of heated debate around this problem, which, like the search and seizure issue, remains unresolved and under consideration.

In summary, at Cottage Lane children are constructing a legal reality for themselves by dealing with the problems in their school community. What has been presented is a working, experience-based, law-related curriculum which is directly available to children within the limits of their developmental stages. It makes the hidden curriculum explicit and provides children with an opportunity to utilize the peer group for the resolution of conflicts, a process which according to Piaget and Kohlberg, advances both moral and cognitive development. At Cottage Lane the adults remain in charge and thus assure children of their limits so that the power given to children is honest and viable. These children have a real opportunity to increase their independence from adults while taking responsibility for their behavior in ways which are developmentally appropriate. The model is in harmony with the major developmental tasks of middle years children and works with, rather than

against, the struggle for autonomy. It encourages the construction of legal abstractions which are consonant with the child's developmental stage. Some of the legal concepts being constructed include: the meaning of rights, the meaning of community, what authority does and how authority is allocated, the strengths and limits of the law. It is a curriculum which, by giving children an experiential understanding of how laws are created and what they are for, provides a solid conceptual background upon which to build the entire civics curriculum in the upper school grades.

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